**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 69515 / May 6, 2013**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-15316**

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| **In the Matter of**<br><br>**THE CITY OF HARRISBURG, PENNSYLVANIA**<br><br>**Respondent.** | **ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER** |

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against the City of Harrisburg, Pennsylvania ("Harrisburg" or "Respondent" or "City").

## II.

In anticipation of the institution of these proceedings, Harrisburg has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Harrisburg consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

## III.

On the basis of this Order and Harrisburg's Offer, the Commission finds[1] that:

## Summary

1. This matter involves Harrisburg's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with material misstatements and omissions made by Harrisburg in its public statements and financial information, during a multi-year period where the City also failed to comply with written undertakings executed by the City in the form of Continuing Disclosure Certificates ("Continuing Disclosure Certificates"). These undertakings were a prerequisite to the underwriting of primary offerings of municipal securities subject to Rule 15c2-12 of the Exchange Act.[2] Pursuant to the Continuing Disclosure Certificates, the City agreed to provide certain ongoing financial information and notices for the benefit of bondholders. Harrisburg is a near-bankrupt city under state receivership largely by virtue of approximately $260 million[3] in outstanding debt it guaranteed for upgrades and repairs to a municipal Resource Recovery Facility ("RRF"), owned by The Harrisburg Authority ("Authority"). As of March 15, 2013, Harrisburg has found it necessary, on three occasions, to withhold approximately $13.9 million in general obligation debt service payments in order to have sufficient cash flow to meet essential services in the City.

2. For over two years, from January 2009 through March 2011 (the "relevant time period"), because Harrisburg did not submit annual financial information, audited financial statements, notices of failure to provide required annual financial information and notices of material events ("financial information and notices") pursuant to its Continuing Disclosure Certificates, Harrisburg's financial information and notices available to the market were incomplete and outdated. During the relevant time period, Harrisburg's most recent annual financial

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1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2 Rule 15c2-12 prohibits, among other things and subject to certain exemptions, any broker, dealer or municipal securities dealer, when acting as an underwriter in a primary offering of municipal securities, from purchasing or selling municipal securities unless they have reasonably determined that the issuer of municipal securities, or an obligated person, has undertaken in a written agreement or contract for the benefit of holders of such securities to provide financial information and notices with information repositories known as Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs"). An "obligated person" generally means any person or entity (including an issuer of separate securities) that is committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities being offered. On December 5, 2008, the Commission amended Rule 15c2-12 to require underwriters to reasonably determine that issuers or obligated persons undertake to submit documents with the Municipal Securities Rulemaking Board ("MSRB") instead of NRMSIRs and state information depositories (as of July 2009).

3 This figure does not include the approximately $25 million loan due from the Authority to Covanta Energy, Inc., the operator of the RRF.

information that was publicly available was for its year ended December 31, 2008.[4] That document, issued almost a year later on December 23, 2009, contained material misrepresentations and omissions regarding Harrisburg's financial condition and its credit ratings. As a result of Harrisburg's multi-year failure to provide financial information and notices as Harrisburg had agreed pursuant to its Continuing Disclosure Certificates, investors and the trading markets did not have certain information regarding the City's financial condition and had to seek out other public statements made by Harrisburg for current information on the City's finances. Those public statements misrepresented and omitted to state material information regarding Harrisburg's deteriorating financial condition and credit ratings downgrades resulting from the RRF debt guarantees.

3. During the relevant time period, Harrisburg had approximately $43 million in outstanding general obligation debt and constituted an obligated person for approximately $455 million of outstanding debt it guaranteed for several of its component units, including the Authority, the Harrisburg Parking Authority ("HPA"), and the Harrisburg Redevelopment Authority ("HRA"). Harrisburg entered into at least six separate Continuing Disclosure Certificates in connection with its general obligation and the RRF bond offerings. Pursuant to these Continuing Disclosure Certificates, Harrisburg agreed to provide financial information and notices, including, but not limited to, principal and interest payment delinquencies, and changes in bond ratings.[5] Beginning in July 2009, Harrisburg was obligated under its Continuing Disclosure Certificates to submit this information to a central repository maintained by the MSRB, known as the Electronic Municipal Market Access ("EMMA") system.

4. Harrisburg had not submitted annual financial information or audited financial statements in accordance with its Continuing Disclosure Certificates since submitting its 2007 Comprehensive Annual Financial Report ("CAFR") to a NRMSIR in January 2009.[6] Harrisburg's CAFR[7] for the year ended December 31, 2007, completed on December 29, 2008 ("2007 CAFR"), was submitted to a NRMSIR on January 30, 2009. The City's CAFR for the year ended December 31, 2008 ("2008 CAFR") was completed on December 23, 2009. Although it was publicly

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4 Harrisburg submitted its CAFR for the year ended December 31, 2009 to EMMA on August 6, 2012. The CAFR for the year ended December 31, 2010 was submitted to EMMA on December 20, 2012. The CAFR for 2011 is still outstanding.

5 In contrast to the Continuing Disclosure Certificates entered into by the City for its general obligation bonds, the RRF bonds only required the City to submit annual financial information and relieved the City of any obligation to submit material event notices.

6 Pursuant to the terms of its Continuing Disclosure Certificates, Harrisburg was required to submit annual financial information within 270 days after the end of its December 31st fiscal year end and until July 1, 2009 was required to file with all NRMSIRs. Harrisburg submitted its CAFR for the year ended December 31, 2009 to EMMA on August 6, 2012. The CAFR for the year ended December 31, 2010 was submitted to EMMA on December 20, 2012. The CAFR for 2011 is still outstanding.

7 A CAFR is a set of government financial statements of a state, municipal or other governmental entity that complies with generally accepted accounting principles ("GAAP").

available on the City's website at the time,[8] the 2008 CAFR was never submitted to EMMA.[9] Moreover, the 2007 and 2008 CAFRs contained material misrepresentations and omissions with respect to Harrisburg's credit ratings and the potential impact of the RRF debt on the City's financial health. Harrisburg also did not submit material event notices regarding its failure to submit annual financial information or its credit rating downgrades until March 29, 2011, after the Commission had commenced its investigation.

5. At a time of increased interest in its financial health by virtue of the Authority's deteriorating financial condition, Harrisburg failed to comply with its Continuing Disclosure Certificates for over two years, which could have created a risk that investors would purchase or sell securities in the secondary market on the basis of incomplete and outdated information. This resulted in investors having to seek out other public statements the City made regarding its fiscal situation during the relevant time period. However, little information concerning the City's fiscal situation was publicly available.[10] Among the information publicly available, and routinely posted to Harrisburg's website at the time, were Harrisburg's 2009 Budget and Transmittal Letter, the 2009 State of the City Address, and its Mid-Year Fiscal Report for 2009. Those public statements materially misstated and failed to disclose material information regarding Harrisburg's financial condition and credit ratings.

**Respondent and Related Entity**

6. The City of Harrisburg is the capital of the Commonwealth of Pennsylvania, with the power to issue municipal securities. Harrisburg is the ninth largest city in Pennsylvania with a population of approximately 48,000 and annual revenues of approximately $55 million.

7. The Harrisburg Authority is a municipal authority under the provisions of Pennsylvania's Municipality Authorities Act, 53 Pa. C.S.A. § 5601, et seq., with the power to issue debt. The Authority provides water and sewer services to the citizens of Harrisburg. The Authority also owns the RRF, a plant located in Harrisburg that converts solid waste to energy. The RRF is primarily used to dispose of solid waste generated within Harrisburg and various other municipalities located in Dauphin County, Pennsylvania.

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[8] Harrisburg significantly revised its website in May 2011. The revised Harrisburg website no longer includes historical financial information or prior year public statements made by Harrisburg or its officials.

[9] Harrisburg erroneously submitted its 2008 CAFR with a former NRMSIR on March 2, 2010. As previously discussed, all financial information and notices were to be submitted to EMMA on or after July 2, 2009.

[10] During the relevant time period, the Authority had not issued annual financial information since its audited financial statements for the year ended December 31, 2008. These audited financial statements were issued on December 3, 2009 and submitted to EMMA on March 9, 2010. The Authority submitted its audited financial statements to EMMA for 2009 and 2010 on December 28, 2011 and December 4, 2012, respectively. The Authority, on behalf of itself and Harrisburg, submitted to EMMA various material event notices reflecting its financial difficulties, including unscheduled draws on its debt service reserve funds. The material event notices submitted by the Authority did not disclose the impact of those events on Harrisburg's financial condition.

## Harrisburg's Financial Crisis

8. Harrisburg's RRF began operations in 1972. Harrisburg sold the RRF to the Authority in 1993, but continued to operate the facility. In 1998, the Authority issued $56 million of bonds to refinance the then-existing RRF debt guaranteed by Harrisburg.[11] Two years later, in 2000, the Authority issued another $25 million in bonds, also guaranteed by Harrisburg, to partially refinance outstanding RRF debt and fund ongoing operating costs and equipment, among other things.[12] In 2002, the Authority issued $17 million of RRF debt, also guaranteed by Harrisburg, primarily for working capital needs.[13] The RRF was shut down for repairs in 2003 pursuant to a consent order by the Environmental Protection Agency ("EPA"). From 2003 to 2007, the Authority undertook a major retrofit of the RRF to bring it into compliance with EPA standards. In 2003, to finance this work and refinance existing debt, the Authority issued an additional $201 million in bonds, all guaranteed by Harrisburg. In the event Harrisburg is unable to pay under its primary guarantee, $111 million of the 2003 Authority bonds were further secured by a secondary guarantee from Dauphin County.[14]

9. As a result of a series of delays and cost overruns in completing the retrofit work, the Authority turned over RRF operations to a private company in January 2007. During 2007, the Authority did not have sufficient revenues to make its RRF debt service payments. As a result, beginning in June 2007, Harrisburg paid about $4 million of the approximately $12 million of the Authority's RRF debt service payments for 2007.[15] As secondary guarantor, Dauphin County

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11 In particular, on August 1, 1998, the Authority issued $56 million of its Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A through D of 1998, of which approximately $11 million was outstanding as of December 31, 2007. At closing, Harrisburg executed a Guaranty Agreement with respect to the principal of and interest on the bonds as well as a Continuing Disclosure Certificate.

12 On December 1, 2000, the Authority issued $25 million of its Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A and B of 2000. This issuance was refunded in 2003. At closing, Harrisburg executed a Guaranty Agreement with respect to the principal of and interest on the bonds as well as a Continuing Disclosure Certificate.

13 On August 15, 2002, the Authority issued $17 million of its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002, of which approximately $16 million was outstanding as of December 31, 2007. At closing, Harrisburg executed a Guaranty Agreement with respect to the principal of and interest on the bonds and a Continuing Disclosure Certificate.

14 The Authority issued $76 million of its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Refunding Revenue Bonds, Series A, B, and C of 2003 on June 4, 2003 and $125 million of its Guaranteed Resource Recovery Facility Revenue Bonds, Series D-1 and D-2 and Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds E and F of 2003 on December 1, 2003, all of which was outstanding as of December 31, 2007. At closing, Harrisburg executed Guaranty Agreements with respect to the principal of and interest on the bonds and two separate Continuing Disclosure Certificates. Dauphin County executed secondary Guaranty Agreements with respect to Series D-1, D-2, and E in the event Harrisburg fails to pay under its Guaranty Agreement.

15 The Authority, on behalf of itself and Harrisburg, submitted material event notices to the NRMSIRs regarding these guarantee payments.

made another $3 million in RRF debt service payments that Harrisburg was unable to make. In December 2007, the Authority privately placed an additional $30 million of debt which Harrisburg again guaranteed (the "2007 Notes).[16] Dauphin County is also secondary guarantor on the 2007 Notes. The proceeds of the 2007 Notes were applied by the Authority to, among other things, provide the new RRF operator additional funds to complete the retrofit, make the RRF's 2008 debt service payments, and reimburse Harrisburg and Dauphin County for the guarantee payments previously made on RRF debt during 2007. The 2007 Notes did not provide any additional working capital for the RRF beyond 2008. By December 2007, Harrisburg was responsible for approximately $260 million of outstanding debt for the RRF through its primary guarantees. Dauphin County serves as a secondary guarantor on approximately $141 million of that RRF debt.

10. In addition to its RRF debt, by December 2007, Harrisburg had guaranteed approximately $110 million of HPA bonds and about $85 million of HRA bonds. Moreover, Harrisburg had outstanding $43 million of general obligation debt.[17] The City's outstanding obligations from both its general obligation bonds and the primary guarantees to its various component units totaled approximately $498 million as of December 31, 2007, which represented about eight times the City's annual general fund revenues of $61 million for 2007.

11. At various times from mid-2008 through 2009, the Authority and its financial advisors provided information to Harrisburg City Council and City administrators regarding the RRF's deteriorating financial condition. Specifically, from at least May 2008 through August 2009, various presentations and reports from the Authority's financial advisors to Harrisburg officials and City Council provided projections regarding the difficult financial situation facing the Authority absent additional capital or additional revenues. In its August 2008 presentation to Harrisburg's Public Works Committee, the advisors projected the RRF would have a budget deficit of almost $13 million in 2009. In a September 2008 presentation to Harrisburg officials, the Authority's financial advisors indicated that the Authority would only have approximately $3 million available to cover an estimated RRF debt service of $16 million in 2009.

12. By late 2008, it was clear to Harrisburg's administration and the City Council that the Authority would not have sufficient revenues to meet its debt service obligations for 2009 and beyond without a significant rate increase for waste disposal at the RRF. A November 2008 report prepared by the Authority's financial advisors showed the RRF's projected debt service for 2009 increasing to $18 million.

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[16] In late 2007, the Authority privately placed $30 million of Guaranteed Resource Recovery Facility Limited Obligation Notes, Series C of 2007 and Guaranteed Federally Taxable Resource Recovery Facility Limited Obligation Notes, Series D of 2007. At closing, Harrisburg executed Guaranty Agreements with respect to the principal of and interest on these bonds. Dauphin County executed secondary Guaranty Agreements with respect to the bonds in the event Harrisburg failed to pay under its Guaranty Agreements.

[17] On December 30, 1997, Harrisburg borrowed $52 million original issue amount of its General Obligation Refunding Bonds, Series D and F of 1997, Capital Appreciation Bonds, of which approximately $43 million was outstanding as of December 31, 2007, with an accreted obligation value of approximately $74 million. At closing, Harrisburg executed a Continuing Disclosure Certificate for the bonds.

13. On December 2, 2008, the Authority sought a rate increase from $63.75 to $165 per ton for waste originating outside of the City but within Dauphin County.[18] A few days later, Dauphin County challenged the rate increase in court. The matter went to binding arbitration and Dauphin County prevailed on February 18, 2009. The Authority received only a minimal rate increase of $1.58 per ton. By this point, without the requested waste disposal rate increase, the Authority and its advisors projected that the Authority was unlikely to meet its future RRF debt service payments. As primary guarantor, Harrisburg ultimately became responsible for the almost $18 million of Authority debt service payments to be paid in 2009, as well as approximately $64 million of Authority debt service payments in 2010.[19]

**Harrisburg Has Not Submitted**
**Financial Information and Notices**

14. During the relevant time period, Harrisburg did not submit financial information and notices pursuant to its Continuing Disclosure Certificates. In addition, much of Harrisburg's publicly available financial information was incomplete and outdated, with its most recent CAFR dating back to 2008.

15. Under the City's Continuing Disclosure Certificates, if Harrisburg is unable to provide annual financial information within 270 days of its fiscal year end, it agreed to submit a notice to EMMA (or previously one of the NRMSIRs) referencing its failure to timely provide such information. Harrisburg did not submit such a notice with respect to its 2008 CAFR. Harrisburg submitted its CAFR for the year ended December 31, 2009 to EMMA on August 6, 2012. The CAFR for the year ended December 31, 2010 was submitted to EMMA on December 20, 2012. Harrisburg's CAFR for 2011 is still outstanding. Harrisburg did not submit such notices regarding the lack of its annual financial information in EMMA until March 29, 2011.

16. The City agreed in its Continuing Disclosure Certificates to provide disclosure, in a timely manner, for eleven different categories of material events, including but not limited to, principal and interest payment delinquencies, rating changes, unscheduled draws on debt service reserves reflecting financial difficulties, and failure to provide annual financial information as required. Harrisburg did not submit in a timely manner the material event notices regarding its credit rating downgrades by Moody's.

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[18] The Authority also sought a rate increase from the City. As a result, Harrisburg's disposal rates increased from $58 to $232 annually for residential property and $84.50 to $338 annually for nonresidential property. The City's increase alone was insufficient to address the RRF's mounting debt problems, generating only approximately $5.5 million annually in additional revenues.

[19] The approximately $64 million due in 2010 includes $35 million for principal repayment of the 2007 Notes in December 2010 and replenishment of the RRF debt service reserve fund draws in 2009.

**Harrisburg Made Material Misrepresentations and**
**<u>Omissions Concerning Its Financial Health</u>**

**A. <u>Harrisburg's 2007 and 2008 CAFRs</u>**

17. Harrisburg's 2007 CAFR omitted the $4 million in guarantee payments that the City had paid on the RRF debt during 2007. The Authority repaid Harrisburg in December 2007 when it issued the 2007 Notes. This omission was material because it could have signaled to Harrisburg investors and potential investors that the Authority was having significant financial difficulties as early as 2007.

18. On October 28, 2009, Moody's Investor Services, Inc. ("Moody's) downgraded Harrisburg's general obligation bonds from Baa2 to Ba2, citing in its report the difficulties Harrisburg had in paying its RRF debt as the primary reason for the downgrade. In its 2008 CAFR submitted in December 2009, Harrisburg omitted the downgrade by Moody's.

19. Also in the 2008 CAFR, Harrisburg noted in its Management's Discussion and Analysis section that "[t]here is a high degree of uncertainty regarding the Authority's ability to operate at capacity in order to sustain their [RRF] debt service obligation. The City has had to honor those guarantees at various times during 2009." This statement was misleading because by December 2009, the extent of the Authority's financial difficulties was not uncertain. Harrisburg knew that the Authority had not obtained its waste disposal rate increase and that, as a result, the Authority would not have sufficient revenues to meet its debt service obligations for 2009 and beyond. While the 2008 CAFR's Subsequent Events footnote stated that the Authority lost its arbitration with Dauphin County and listed the various payments made by Harrisburg as guarantor on behalf of the Authority, it failed to disclose the resulting impact of those payments on Harrisburg's financial condition. Only a month before the 2008 CAFR was submitted, Harrisburg publicly issued and posted on its website a proposed 2010 budget seeking to include the approximately $64 million in debt service for the Authority's RRF debt, including repayment of the 2007 Notes. That proposed budget was ultimately not adopted and the City's final budget did not include monies earmarked for RRF debt service payments in 2010.

**B. <u>Harrisburg's Public Statements</u>**

20. On November 25, 2008, the Harrisburg administration submitted a proposed 2009 Budget to City Council, which was approved on December 22, 2008 ("2009 Budget"). The 2009 Budget included $63 million of general fund expenditures. At the time, Harrisburg's 2009 Budget and its accompanying transmittal letter were accessible on Harrisburg's website. By the time the 2009 Budget was passed, Harrisburg was aware of the Authority's projected budget deficits and that Dauphin County was challenging the rate increase. As a result, the Authority was unlikely to have sufficient revenues to pay its 2009 debt service obligations. Harrisburg's 2009 Budget, as adopted, did not include funds for debt guarantee payments for the RRF, raising questions as to whether it would fulfill its obligations under those guarantees. Nevertheless, at the beginning of the year, Harrisburg administration officials informally set aside $2.1 million of its surplus reserves in anticipation of potentially having to make those guarantee payments.

21. The 2009 Budget also misstated Harrisburg's credit as being rated "Aaa" by Moody's based upon its insurance. By December 2008, Moody's had announced its downgrade of Harrisburg's general obligation credit rating to Baa1.

22. On April 9, 2009, Harrisburg's Mayor at the time gave the annual State of the City Address ("2009 Address"). At the time, the 2009 Address was accessible on Harrisburg's website and styled as an "annual report on the progress of Pennsylvania's Capital City and the largest municipality in our region." In the 2009 Address, the former Mayor only discussed the RRF as a situation that was an "additional challenge" and an "issue that can be resolved." The 2009 address was misleading because it omitted to state the amount of RRF debt the City would likely have to repay from its General Fund, and the impact that repayment obligation was already having on Harrisburg's finances. By April 2009, Harrisburg had already made $1.8 million in guarantee payments on the RRF debt. In addition, by this time, Harrisburg knew that the Authority had failed to secure the requested rate increase, making it likely that Harrisburg would have to repay $260 million of RRF debt as guarantor.

23. Between December 2008, when Harrisburg's 2009 Budget was made public, and April 2009, when Harrisburg's Mayor made his 2009 Address, $28 million of bonds issued or guaranteed by Harrisburg traded without investors having the benefit of material information regarding Harrisburg's financial condition.

24. Harrisburg filed its Mid-Year Fiscal Report for 2009 ("2009 Mid-Year") on August 14, 2009. The 2009 Mid-Year was designed to provide a snapshot on budget-to-actual figures for Harrisburg approximately at the middle of the year. At the time, the 2009 Mid-Year was accessible on Harrisburg's website. The 2009 Mid-Year did not reference any of the guarantee payments the City had made on the RRF debt, which at this point totaled $2.3 million, or 7% of its General Fund expenditures to the mid-year point. Between April 2009, when the Mayor made his 2009 Address, and August 2009, when Harrisburg's 2009 Mid-Year was issued, another $24 million of bonds issued or guaranteed by Harrisburg traded without investors having the benefit of material information regarding Harrisburg's financial condition.

25. By the end of 2009, Harrisburg had made about $5.6 million of RRF debt service payments under its guarantee obligations. This information was material, in part because, it represented approximately 9% of Harrisburg's projected General Fund expenditures as of December 31, 2009. The omission also did not alert investors or potential investors of the fact that Harrisburg had been using its surplus reserves to make guarantee payments.

26. Between August 2009, when Harrisburg filed its 2009 Mid-Year, and December 2009, when Harrisburg issued its 2008 CAFR, another $35 million of bonds issued or guaranteed by Harrisburg traded without investors having the benefit of material information regarding Harrisburg's financial condition.

27. Between December 2008 and December 2009, a total of $87 million bonds issued or guaranteed by Harrisburg traded without investors having the benefit of material information regarding Harrisburg's financial condition. Consequently, material information was not available for investors to consider while making their investment decisions or evaluating appropriate prices for the bonds.

28. On February 11, 2010, Moody's downgraded Harrisburg's general obligation bonds again to a rating of B2, with a negative outlook. For the second time, Moody's cited the difficulties Harrisburg faced in paying its RRF debt as the primary reason for the downgrade. Harrisburg did not disclose Moody's February 2010 downgrade until March 29, 2011.

**<u>State Declares Harrisburg a Fiscal Emergency</u>**

29. For several years, Harrisburg has been exploring various options to close its budget gap and address its RRF debt issue. On October 1, 2010, Harrisburg filed a Petition for Determination of Municipal Financial Distress under Pennsylvania's Municipalities Financial Recovery Act of 1987 ("Act 47"). Harrisburg was accepted into the Act 47 program on December 15, 2010. The Act 47 program allowed Harrisburg to obtain assistance from the Commonwealth of Pennsylvania in developing a financial recovery plan. A Municipal Financial Recovery Act Recovery Plan ("the Recovery Plan") was submitted by the Act 47 coordinator to Harrisburg on June 13, 2011. According to the Recovery Plan, "[t]he City of Harrisburg is facing a direct, immediate and grave financial crisis. The financial crisis is so severe that the City teeters uncomfortably on the verge of bankruptcy that could be triggered at any moment by parties outside its control." Harrisburg's City Council rejected the Recovery Plan in July 2011.

30. On March 29, 2011, Harrisburg submitted a material event notice to EMMA (the "March 29$^{th}$ Notice"). In the March 29$^{th}$ Notice, Harrisburg disclosed, among other things, (1) its rating change by Moody's; (2) the unscheduled debt service draws on the RRF bonds; (3) its failure to fulfill its guarantee obligations; and (4) its Act 47 petition.

31. On October 11, 2011, Harrisburg's City Council filed a voluntary Chapter 9 bankruptcy petition. The bankruptcy petition was dismissed by the bankruptcy court on November 23, 2011 on the basis that the bankruptcy was barred by Pennsylvania state law and had not been authorized by the Mayor. The bankruptcy court's dismissal was appealed by the City Council on December 10, 2011. The appeal was rejected by the district court on February 1, 2012.

32. On October 20, 2011, Pennsylvania's governor signed legislation authorizing the State to declare fiscal emergency in Harrisburg. On November 18, 2011, a receiver was appointed under this legislation to implement a Recovery Plan and take control of the City's finances. On March 27, 2012, a Dauphin County court appointed a second receiver to oversee the day-to-day operations of the RRF. The State-appointed Harrisburg receiver resigned on March 30, 2012. A new State-appointed Harrisburg receiver was confirmed on May 24, 2012.

33. Harrisburg has missed approximately $13.9 million in general obligation debt service payments as of March 2013. On March 11, 2013, Harrisburg submitted a material event notice to EMMA indicating that it would not be making its March 15th general obligation debt service payments in the amounts of $2,700,000 and $2,505,000, for its General Obligation Refunding Bonds, Series D and F of 1997, respectively. On March 9, 2012, Harrisburg submitted a material event notice to EMMA indicating that it would not be making its March 15th general obligation debt service payments in the amounts of $2,735,000 and $2,530,000, for its General Obligation Refunding Bonds, Series D and F of 1997, respectively. On September 14, 2012, Harrisburg submitted a material event notice to EMMA indicating that it would not be making its September 15th general obligation debt service payments in the amounts of $1,765,000 and $1,635,000, for its General Obligation Refunding Bonds, Series D and F of 1997, respectively.

## Harrisburg Enhances Its Disclosure Process

34. During the relevant time period, Harrisburg did not have policies and procedures in place to ensure that the financial information it was releasing to the public was accurate in all material respects. Harrisburg also did not have any policies and procedures in place to ensure that it was complying with its Continuing Disclosure Certificates.

35. With the assistance of counsel, Harrisburg has enhanced its disclosure process by instituting formal written policies and procedures with respect to public statements regarding financial information made by the City and its compliance with its Continuing Disclosure Certificates ("Disclosure Policy"). In its Disclosure Policy, among other things, Harrisburg has designated the City's Business Administrator as the individual responsible for filing Harrisburg's annual financial information and notices with EMMA. The Business Administrator is required to provide the Mayor, City officials and the City Council with written confirmation that the financial information and notices have been submitted to EMMA. In addition, Harrisburg has implemented annual training for City employees involved in the disclosure process to ensure compliance with the Disclosure Policy and to provide an overview of the City's obligations under the federal securities laws. This annual training will be conducted by the City's Business Administrator. City employees receiving the training will provide written certification that they have completed the training and have reviewed, understood and will comply with the Disclosure Policy. No later than 14 days after the end of each fiscal year, the Business Administrator must certify that he has conducted the annual training.

36. Harrisburg has also committed to submitting a copy of its Disclosure Policy, together with any amendments, on EMMA and placing it on the City's public website. In addition, any securities offering for which the City is an issuer or obligated person will now also include a certification by the Business Administrator that the information set forth therein regarding the City does not contain any untrue statement of material fact or omit to state any material fact necessary to make the information contained in the offering document not misleading. Finally, Harrisburg has agreed to disclose the terms of this Order on EMMA and in the preliminary and final offering documents of any future securities offerings for which the City is an issuer or obligated person within five years from the date of this Order.

## Legal Discussion

37. Harrisburg and other municipal securities issuers are subject to the antifraud provisions of the federal securities laws, which include Exchange Act Section 10(b) and Rule 10b-5. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit misrepresentations or omissions of material fact in connection with the purchase or sale of any security. This provision prohibits the making of any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of securities. A fact is material if there is a substantial likelihood that its disclosure would be considered significant by a reasonable investor. This requirement is fulfilled if there is a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the "total mix" of information available. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1987); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

38. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder also require a showing that defendants or respondents acted with scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980). The scienter requirement for antifraud violations may be satisfied by a showing of recklessness. In re Advanta Corp. Sec. Litig., 180 F.3d 525, 535 (3d Cir. 1999). Recklessness has been defined as "extreme departure from the standards of ordinary care, and which represents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." McLean v. Alexander, 599 F.2d 1190, 1197 (3d Cir. 1979) (quoting Sunstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir. 1976)).

39. Municipal issuers have an obligation to make sure that information that is released to the public that is reasonably expected to reach investors and the trading markets, even if not specifically published for that purpose, does not violate the antifraud provisions.[20] In its 1994 Interpretive Guidance, the Commission reminds issuers that without a "mechanism for disseminating information about the municipal issuer to the market as a whole…investors purchasing municipal securities in the secondary market risk doing so on the basis of incomplete and outdated information. Since access by market participants to current and reliable information is uneven and inefficient, municipal issuers presently face a risk of misleading investors through public statements that may not be intended to be the basis of investment decisions, but nevertheless may be reasonably expected to reach the securities markets."[21]

## Violations

40. Harrisburg made material misrepresentations and omissions in its 2007 and 2008 CAFRs, 2009 Budget and Transmittal Letter, 2009 State of the City Address and its Mid-Year Fiscal Report for 2009, regarding Harrisburg's credit ratings and the potential impact of the RRF

[20] *See* Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Exchange Act Release No. 34-33741 (March 9, 1994) ("1994 Interpretive Guidance").

[21] *See* 1994 Interpretive Guidance, page 13.

debt on the City's financial health. As a result of this reckless conduct, Harrisburg violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

## Remedial Efforts

41. In determining to accept Harrisburg's Offer, the Commission considered the cooperation afforded the Commission staff during the investigation and remedial acts taken by Harrisburg, referenced in paragraphs 35 and 36.

## IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Harrisburg's Offer.

ACCORDINGLY, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that Harrisburg shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary